

BEFORE THE
GOVERNING BOARD
COMPTON UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Najah Suad Najji, a certificated
employee of the Compton Unified
School District,

Respondent.

OAH Case No. 2011030577

PROPOSED DECISION

Amy C. Lahr, Administrative Law Judge, Office of Administrative Hearings, heard this matter on May 6, 2011, in Compton, California.

Adam J. Fiss, of Littler Mendelson, P.C., represented Alejandro M. Flores (Flores), Assistant Superintendent Human Resources, Compton Unified School District (District).

Michael R. Feinberg, Attorney at Law, represented respondents who either settled the matter or had their layoff notices rescinded. Mr. Feinberg did not represent respondent Najah Suad Najji (Respondent). Respondent failed to appear at the hearing.

The hearing in this matter was initially scheduled for April 18, 2011. On March 17, 2011, Presiding Administrative Law Judge Michael A. Scarlett granted a continuance, thereby extending by 16 days the deadlines set forth in Education Code¹ sections 44949, subdivision (c), and 44955, subdivision (c). (Ed. Code, § 44949, subd. (e).)

Documentary evidence, and evidence by oral stipulation on the record, was received at the hearing, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Assistant Superintendent Flores filed the Accusation in his official capacity.
2. Respondent is a certificated employee of the District.
3. On March 8, 2011, the Governing Board of the District (Governing Board),

¹ All further statutory references are to the Education Code.

following the recommendation of the District's Superintendent, adopted Resolution Number 10/11-023, reducing or discontinuing certain services for the 2011-2012 school year, including the adult education program.

4. Assistant Superintendent Flores thereafter provided written notice to the Governing Board and to Respondent that the Superintendent recommended the termination of Respondent's services for the 2011-2012 school year due to the reduction of particular kinds of services.

5. On March 12, 2011, the District provided notice to Respondent that her services will not be required for the 2011-2012 school year due to the reduction of particular kinds of services. Respondent did not timely file a request for hearing.

6. On April 7, 2011, the District filed and served the Accusation and other required documents on Respondent, at her last known address. Respondent did not thereafter timely file a Notices of Defense.

7. Respondent signed the certified mail receipt for both the Notice of Defense and Request for Hearing documents sent by the District. She did not personally submit either of those documents to the District. Respondent did not appear at the hearing. The District represented that Respondent moved out of state.

8. Mr. Feinberg timely filed a global representation notice on behalf of all respondents; however, Respondent did not subsequently retain Mr. Feinberg as counsel. Mr. Feinberg attempted to contact Respondent; however, her phone was disconnected. He never had any contact with Respondent. Because Mr. Feinberg did not represent Respondent, his request for a hearing on her behalf was invalid.

9. The service set forth in factual finding number 3 is a particular kind of service which may be reduced or discontinued within the meaning of Education Code section 44955.

10. The Governing Board's decision to reduce or discontinue the particular kind of service is neither arbitrary nor capricious but is rather a proper exercise of its discretion.

11. No evidence was presented at the hearing to establish that any certificated employee junior to Respondent was retained to perform a service which Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Education Code section 44949, subdivision (b) states, "If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his

or her waiver of his or her right to a hearing.” Government Code section 11506, subdivision (c) provides, “Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.” Respondent failed to request a hearing or file a notice of defense. Accordingly, she has waived her right to a hearing.

2. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 7.

3. The service listed in factual finding number 3 is determined to be a particular kind of service within the meaning of section 44955, by reason of factual finding numbers 3 and 9.

4. Cause exists under sections 44949 and 44955 for the reduction of the particular kind of service set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 3, 9 and 10.

5. Cause exists to terminate the services of Respondent, by reason of factual finding numbers 1 through 11, and legal conclusion numbers 1 through 4.

ORDER

The Accusation is sustained and the District may notify Najah Suad Najiy that her services will not be needed during the 2011-2012 school year due to the reduction of particular kinds of services.

DATED: May 13, 2011

AMY C. LAHR
Administrative Law Judge
Office of Administrative Hearings